7100077

# WHIE DAMNED SYRVIES OF ANDERION

#### TO MILTO WHOM THESE PRESENTS SHAML COME:

# W. Atlee Burpee Company

Williams, there has been presented to the

#### Secretary of Agriculture

An application requesting a certificate of protection for an alleged novel variety of sexually reproduced plant, the name and description of which are contained in the application and exhibits, a copy of which is hereunto annexed and made a part hereof, and the various requirements of LAW in such cases made and provided have been complied with, and the title thereto is, from the records of the PLANT Variety Protection Office, in the applicant(s) indicated in the said copy, and whereas, upon due examination made, the said applicant(s) is (are) adjudged to be entitled to a certificate of plant variety protection under the LAW.

NOW, therefore, this certificate of plant variety protection is to grant unto the said applicant(s) and the successors, heirs or assigns of the said applicant(s) for the term of \$eventeen years from the date of this grant, subject to the payment of the required fees and periodic replenishment of viable basic seed of the variety in a public repository as provided by LAW, the right to exclude other; from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing a hybrid or different variety therefrom, to the extent provided by the Plant Variety Protection Act (84 stat. 1542, as amended, 7 u.s.c. 2321 et seq.)

CHINA ASTER

'Burpeeana Extra Early Rose'

In Lestimony Minercot, I have hereunto set my hand and caused the seal of the Plant Variety Protection Office to be affixed at the City of Washington this 28th day of March in the year of our Lord one thousand nine hundred and seventy-four

Karl L. But

Secretary of Agriculture

Attast:

Sollin

Commissioner

Plant Variety Protection Office

Grain Division

Agricultural Marketing Service

#### CHINA ASTER BURPEEANA EXTRA EARLY ROSE

#### 13A. Exhibit A:

Selected out of Burpeeana Extra Early Rosy Morn in 1958 and improved by single plant selection since then.

FORM APPROVED OUB NO. 40-R3712

#### APPLICATION FOR PLANT VARIETY PROTECTION CERTIFICATE

INSTRUCTIONS: See <i>Reverse</i> .			
1. VARIETY NAME OR TEMPORARY DESIGNATION	2. KIND NAME		AL USE ONLY
Bur p eeana Extra Early Rose	China Aster	PV NUMBER	/77
3. GENUS AND SPECIES NAME	4. FAMILY NAME (Botanical)	FILING DATE	TIME A.M.
Callistephus chinensis	Compositae	4.22.71	BALANCE DUE
	;. DATE OF DETERMINATION	<b>350</b>	\$
	1968	: 250	\$
O NAME OF APPLICANT(O)	7. ADDRESS (Street and NO. or R.F.D. No	ity, State, and ZIP	\$
6. NAME OF APPLICANT(S)	Coda)	ity, State, and <b>ZIP</b>	8. TELEPHONE AREA CODEANUNUMBEK
W. Atlee Burpee Co.	Hunting Park Avenue & Philadelphia, Pa. 1913	18th Street 2	215-228-8800
9. IF THE NAMED APPLICANT IS NOT A PER ORGANIZATION: (Corporation, partnership, c		RPORATION	11. DATE OF INCOR- PORATION
Corporation	Pennsylvania		1915
T2. Name and mailing address of application	<u> </u>	n this application an	
<ul> <li>13. CHECK BOX BELOW FOR EACH ATTACH</li> <li>X 13A. Exhibit A, Origin and Breed</li> <li>X 13B. Exhibit B, Botanical Descri</li> <li>X 13C. Exhibit C, Objective Descri</li> <li>13D. Exhibit D, Data Indicative</li> </ul>	ing History of the Variety (See Section ption of the Variety ption of the Variety	n 52 of the Plant Var $/14/73$	riety Protection Act.)
X 13E. Exhibit E, Statement of the	Basis of Applicant's Ownership		
14A. Does the applicant(s) specify that s (See Section 83(a) (If "Yes," answer	er 14B and 14C below.).	a YES X NO	
148. Does the applicant(s) specify that limited as to number of generations		14B, how many gene eder seed?	erations of production
The applicant declares that a viable sa ance of a certificate and will be repler			
		nder the provisions of	enalties.
		1	
(DATE)	(8	IGNATURE OF APPLICA	ANT)

#### INSTRUCTIONS '

GENERAL: Send an original copy of the application, exhibits and \$250.00 fee to U.S. Dept. of Agriculture, Agricultural Marketing Service, Grain Division, 6525 Belcrest Road, Hyattsville, Maryland 20782. (See Section 180.175 of the regulations and rules of practice.) Retain one copy for your files. All items on the face of the form are self-explanatory unless noted below.

#### ITEM

- Insert the date the applicant determined that he had a new variety based on the definition in Section 41 (a) of the Act and decision is made to increase the seed.
- 13a First, give the genealogy, including public and commercial varieties, lines, or clones used, and the breeding method. Second, give the details of subsequent stages of selection and multiplication. Third, indicate the type and frequency of variants during reproduction and multiplication and state how these variants may be identified. Fourth, provide evidence on stability.
- 13b First, give any special characteristics of the seed and of the plant as it passes through the seedling stage, flowering stage and the fruiting stage. Second, describe the mature plant and compare it with a similar commercial variety grown under the same conditions, and indicate the differences.
- 13c A supplemental form will be furnished by the PVPO to describe in detail a variety for each kind of seed.
- 13d Provide complete data indicative of novelty. Seed and plant specimens or photographs of seed and plant comparisons clearly indicating novelty may be submitted. Seeds submitted may be sterile.
- 13e Indicate whether applicant is the actual breeder, the employer of the breeder, the owner through purchase or inheritance, etc.

#### CHINA ASTER BURPEEANA EXTRA EARLY ROSE

13B. Exhibit B:

Annual. No special characteristics of seed, seedling or fruiting stage (that is, seed head), just typical of Callistephus chinensis. Leaves alternate broadly ovate irregularly toothed. Flower heads solitary at ends of branches, chrysanthemum-like with semi-incurved petals. Flowers approximately 3 inches diameter. Habit of plant upright bouquet. Mature plant quite distinct Burpeeana type, nothing else like Burpeeana in commerce. Color bright rose with salmon tint. Height 20 inches.

FORM GR-470-7 (11-1-72)

## UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE

EXHIBIT C (Aste.)

GRAIN DIVISION

HYATTSVILLE, MARYLAND 20782

OBJECTIVE DESCRIPTION OF VARIETY

CHINA ASTER (CALLISTEPHUS CHINENSIS) REFERENCES: See reverse. E OF APPLICANT(S)

FOR OFFICIAL USE ONLY

DVPO NUMBER

W. Atlee Burpee Co. ADDRESS (Street and No. or R.F.D. No., City, State, and ZIP Code)

Hunting Park Avenue & 18th St.

Philadelphia, Pa. 19132

7177

VARIETY NAME OR TEMPORARY DESIGNATION

Burpeeana Extra Early

Place the appropriate number that describes the varietal character in the boxes below. Place a zero in first box (e.g. 0 9 ) when number is 9 or less.

#### 1. PLANT TYPE

1= DWARF (Less than 35 cm.) 2 = INTERMEDIATE (35 - 50 cm.) 3 = TALL (More than 50 cm.)

#### 2. PLANT FORM (At Maturity):

2 1 = SOLITARY 2 = UPRIGHT BRANCHING 3 = BROADLY BRANCHING

2 1 = NOT BASAL BRANCHING 2 = BASAL BRANCHING

#### 3. PLANT ROSETTE:

2 Leaves: 1 = ELLIPTIC 2 = OVATE 3 = SPATULATE 4 = OTHER (Specify)

2 Leaf number (prior to elongation): 1 = FIVE OR LESS 2 = SIX TO NINE 3 = TEN OR MORE

2 Anthocyanin: 1 = ABSENT 2 = PRESENT

#### 4. STEM:

2 | Strength: 1 = NOT BRITTLE 2 = BRITTLE 1 1 = RIGID 2 = FLEXIBLE

Anthocyanin: 1 = ABSENT 2 = PRESENT - ALONG THE VEIN 3 = PRESENT - ENTIRE

Vesture: 1 = GLABROUS 2 = LIGHTLY PUBESCENT 3 = PUBESCENT

#### 5, LEAF

2 Dorsal:Side:

-1 Ventral Side:

1 ≈ GLABROU\$ 2 = PUBESCENT

Dorsal Side:

1 ≈ GLOSSY 2 = DULL Ventral Side:

Margin: 1 = ENTIRE 2 = DENTATE 3 = LACERATE 4 = OTHER (Specify)

#### 6. FLOWERING TYPE

1 1 ≈ SHORT SEASON 2 = LONG SEASON

1 1 = EARLY (Early Bird Type) 2 = INTERMEDIATE (Crego Type) 3 = LATE (Powderpuff Type)

#### 7. FLOWER HEAD:

1 Symmetry: 1 = SYMMETRICAL 2 = ASYMMETRICAL

0 9 CM. ACROSS

2 Shape: 1 = CONCAVE 2 = FLATTENED 3 = CONVEX 4 = GLOBOSE 5 = OTHER (Specify)

3 1 = SINGLE 2 = SEMIDOUBLE 3 = DOUBLE

Odor: 1 = ODORLESS 2 = FAINTLY SWEET 3 = STRONG ODOR

4

#### CHINA ASTER BURPEEANA EXTRA EARLY ROSE

Exhibit D:

Unique type. Upright Comet type growth habit. Flowers Chrysanthemum-like with semi-incurved petals. Terminal flowers all come into bloom at about the same time so whole plant can be pulled and forms a bunch of flowers. Color bright rese with sederal Text.

#### STATEMENT OF APPLICANT

13E. Exhibit E:

The W. Atlee Burpee Co. believes that it is the original and first breeder of the attached described variety, China Aster Burpeeana Extra Early Rose, for which it solicits a certificate; that it has sexually reproduced the variety; that it does not know and does not believe that the same was ever a public variety before the W. Atlee Burpee Co.'s development thereof; the W. Atlee Burpee Co. is the sole breeder of this novel variety; this variety has not been in public use or on sale in the United States more than 1 year prior to the filing date of this application, or described in any printed publication in any country before W. Atlee Burpee Co.'s development for more than 1 year prior to this application; and the variety has not been granted rights in any foreign country prior to the date of this application, or an application filed by W. Atlee Burpee Co., or its legal representatives, or assigns, more than 12 months prior to W. Atlee Burpee Co.'s application in the United States.

Jerome H. Kantor

Assistant to the President

W. Atlee Burpee Co.

#### GRANT OF SECURITY INTEREST

#### (PLANT VARIETY CERTIFICATES)

WHEREAS, W. ATLEE BURPEE COMPANY, a Pennsylvania corporation (herein referred to as "Grantor"), has been issued the Plant Variety Certificates listed on Schedule 1 annexed hereto;

WHEREAS, Grantor is a wholly owned Subsidiary of CDS Holding Corp.;

WHEREAS, Grantor has agreed to grant a first priority security interest in substantially all the assets of Grantor to secure the payment of all amounts owing under the Revolving Credit Agreement, dated as of December 30, 1986 (as amended, supplemented or modified from time to time, the "Credit Agreement"), among CDS Holding Corp., the O.M. Scott & Sons Company and Manufacturers Hanover Trust Company (the "Bank" and "Grantee"); and

WHEREAS, pursuant to the terms of a Subsidiary Security Agreement dated as of December 30, 1986 (the "Subsidiary Security Agreement") made by Grantor in favor of Grantee, its successors transferees and assigns Grantor has mortgaged, pledged and granted to Grantee a security interest in all right, title and interest of Grantor in, to and under all Certificates of Plant Variety Protection now or hereafter issued to the Grantee by the Plant Variety Protection Office of the United States Department of Agriculture (or any successor agency thereto) (all such Certificates being herein collectively referred to as "Plant Variety Certificates"), together with any reissues, extensions or renewals thereof whether presently existing or hereafter arising or acquired in connection with the tangible and intangible assets of the Grantor's business, including the goodwill of the business symbolized by the Plant Variety Certificates issued to and the applications therefor and the registrations thereof, and all products and proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement or dilution thereof or injury to the associated goodwill, to secure the payment of all amounts owing under the Credit Agreement and any and all other amounts from time to time directly owing by the Grantor to the Bank;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby mortgage, pledge and grant to Grantee, its successors, indorses, transfees and assigns, a security interest in all of Grantor's right, title and interest in, to and under the following whether presently existing or hereafter arising or acquired:

- (i) each Plant Variety Certificate and Plant Variety Certificate application, including, without limitation, each Plant Variety Certificate and Plant Variety Certificate application referred to in Schedule 1 hereto, and all of the goodwill of the business connected with the use of, and symbolized by, each Plant Variety Certificate and Plant Variety Certificate application;
- (v) all products and proceeds of the foregoing, including, without limitation, any claim by Grantor against third parties for past, present or future infringement or dilution of any Plant Variety Certificate registration including, without limitation, any registration referred to in Schedule 1, or for injury to the goodwill associated with any Plant Variety Certificate or Plant Variety Certificate application.

This security interest is granted in conjunction with the security interest granted to the Grantee, its successors, indorses, transfees and assigns, in substantially all of the assets of the Grantor, as set forth in the Security Agreement, of which this Agreement is a part.

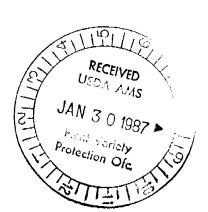
Grantor does hereby further acknowledge and affirm that the rights and remedies of Grantee with respect to the security interest in the Plant Variety Certificates, Plant Variety Certificates applications, made and granted hereby are more fully set forth in the Security Agreement, the

terms and provisions of which are incorporated by reference herein as if fully set forth herein. Terms defined in the Security Agreement shall have their defined meanings when used in this Grant of Security Interest.

IN WITNESS WHEREOF, Grantor has caused this Grant of Security Interest to be duly executed by its officers thereunto duly authorized as of the 30th day of December, 1986.

W. ATLEE BURPEE COMPANY

Title:



STATE OF NEW YORK )

SS.:

COUNTY OF NEW YORK )

On the 30th day December, 1986, before me personally came William N. Englithet, to me personally known and known to me to be the person described in and who executed the foregoing instrument as Palsident of W. Atlee Burpee Company, who being by me duly sworn, did depose and say that he resides at 5572 Longlant, Daylishum, PA; that he is Pusident of W. Atlee Burpee Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that the said instrument was signed and sealed on behalf of said corporation by order of its Board of Directors; that he signed his name thereto by like order; and that he acknowledged said instrument to be the free act and deed of said corporation.

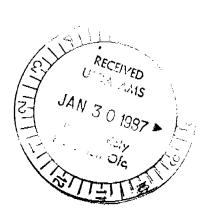
Notary Public

[Seal]

My commission expires:

Notary Public, State of New York
No. 60-4794803
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1987

LORETTA D. BRENNER



OWNER: W. ATLEE BURPEE COMPANY

# PLANT VARIETY PROTECTION CERTIFICATES

CERTIFICATE NO.	TITLE AND SUBTITLE	ISSUE DATE	EXPIRATIO
7100001	LETTUCE 'Green Ice'	4/25/73	1990
7100002	CHINA ASTER 'Totem Pole White'	3/28/74	1991
7100003	CHINA ASTER 'Totem Pole Rose-Pink'	3/28/74	1991
7100004	CHINA ASTER 'Totem Pole Scarlet-Cerise'	3/28/74	1991
7100005	CHINA ASTER 'Totem Pole Azure Blue'	3/28/74	1991
7100006	CHINA ASTER 'Totem Pole Dark Blue'	3/23/74	1991
7100009	VERBENA 'Ruffled White'	4/8/75	1992
7100010	MARIGOLD 'Redcoat'	12/12/75	1992
7100053	CHINA ASTER 'Ideal Dark Blue'	3/14/75	1991
7100054	CHINA ASTER 'Ideal Rose'	3/14/74	1991
7100059	ZINNIA 'Emperor'	12/12/75	1992
7100077	CHINA ASTER 'Burpeeana Extra Early Rose'	3/28/74	1991
7100078	CHINA ASTER 'Burpeeana Extra Early Scarlet Morn'	3/28/74	1991
7100079	CALENDULA 'Golden Gem'	6/27/75	1992
7100081	MARIGOLD 'Golden Fantastic'	5/14/76	1993
7100085	SWEETPEA 'Salmonette'	12/12/75	1992
7100086	SWEETPEA 'Lavender Delight'	12/12/75	1992

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CERTIFICATE NO.	TITLE AND SUBTITLE	ISSUE DATE	EXPIRATION
7100087	SWEETPEA 'Tangerine'	3/5/76	1993
7100088	VERBENA 'Ruffled Pink'	4/8/75	1992
7200054	SQUASH 'Burpee Golden Zucchini'	2/15/75	1994
7200108	SNAPDRAGON 'Bright Scarlet'	11/24/75	1992
7400030	CALIFORNIA POPPY 'Ballerina Yellow'	4/18/75	1992
7400032	CALENDULA 'Orange Gem'	6/27/75	1992
<b>74000</b> 33	ZINNIA 'Ruffled Jumbo Scarlet'	12/12/75	1992
7400034	MARIGOLD 'Big Almost White'	11/15/74	1991
7400040	BEAN 'Greensleeves'	6/18/76	1993
7500024	MARIGOLD 'Golden Hawaii'	3/5/76	1993
7500025	CHINA ASTER 'Red Mound'	6/27/75	1992
7600011	MARIGOLD 'Red Pygmy'	2/15/77	1994
7600071	PUMPKIN 'Triple Treat'	5/9/77	1994
7600072	WATERMELON 'Sugarbush'	7/26/77	1994
7800005	ZINNIA 'Rose Starlet'	2/2/78	1995
7800009	LETTUCE 'Royal Oak Leaf'	2/2/78	1995
7900060	MARGOLD 'Happy Red'	5/1/80	1997
8200017	MARIGOLD 'Xantho-Orange'	6/17/82	1999

# OWNER: W. ATLEE BURPEE COMPANY

CERTIFICATE NO.	TITLE AND SUBTITLE	ISSUE DATE	EXPIRATION
8200028	TOMATO 'Super Beefsteak'	8/19/82	1999
8200129	ASTER 'Pot 'n Patio Blue'	12/30/83	2000
8400138	PUMPKIN 'Bushkin'	8/30/85	2002
8500128	PEA 'Snappy'	10/31/85	2002
8600040	ZINNIA 'Pinwheel Rose'	8/31/86	2003

## **Applications**

APPLICATION NO.	TITLE AND SUBTITLE	APPLICATION DATE
8400139	Watermellon 'Sweet Treat'	12/16/86
8600139	Basil 'Purple Ruffles'	7/7/86
8600149	Cucumber 'Picklebush'	7/9/86
8600158	Zinnia 'Red Lollipop'	9/3/86

#### SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of November 23, 1987, made by W. Atlee Burpee Company, a Pennsylvania corporation (the "Debtor") in favor of Bankers Trust Company, a New York banking corporation (the "Secured Party"). Unless otherwise defined herein or in Article XI hereof, all capitalized terms used herein and defined in the Credit Agreement are used herein as therein defined.

#### WITNESSETH:

WHEREAS, the Secured Party and the Debtor have entered into the Credit Agreement;

WHEREAS, pursuant to the Credit Agreement, the Secured Party has agreed to provide the Debtor, in accordance with the terms and conditions set forth therein, with a working capital line not exceeding the Commitment;

WHEREAS, it is a condition precedent to the incurrence of Advances under the Credit Agreement that the Debtor execute and deliver to the Secured Party this Security Agreement; and

WHEREAS, the Debtor desires to execute this Security Agreement to satisfy the condition described in the preceding paragraph;

NOW, THEREFORE, in consideration of the premises and other benefits to the Debtor, the receipt and sufficiency of which are hereby acknowledged, the Debtor hereby makes the following representations and warranties and hereby covenants and agrees as follows:

## Plant Variety Protection Certificates

CERTIFICATE NO.	TITLE AND SUBTITLE	ISSUE DATE	<b>EXPIRATION</b>
7100001	LETTUCE 'Green Ice'	4/10/73	1990
7100002	CHINA ASTER 'Totem Pole White'	3/28/74	1991
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7100054	CHINA ASTER 'Ideal Rose'	3/14/74	1991
7100059	ZINNIA 'Emperor'	12/12/75	1992
7100077	CHINA ASTER 'Burpeeana Extra Early Rose'	3/28/74	1991
7100078	CHINA ASTER 'Burpeeana Early Early Scar- let Morn'	3/28/74	1991

CERTIFICATE NO.	TITLE AND SUBTITLE	ISSUE DATE	EXPIRATION
7100079	CALENDULA 'Golden Gem'	6/27/75	1992
7100081	MARIGOLD 'Golden Fantastic'	5/14/76	<b>T</b> 993
7100085	SWEETPEA 'Salmonette'	12/12/75	1992
7100086	SWEETPEA 'Lavender Delight'	12/12/75	1992
7100087	SWEETPEA 'Tangerine'	3/5/76	1993
7100088	VERBENA 'Ruffled Pink'	4/8/75	1992
7200054	SQUASH 'Burpee Golden Zucchini'	2/15/77	1994
7200108	SNAPDRAGON 'Bright Scarlet'	11/24/75	1992
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7500024	MARIGOLD 'Golden Hawaii'	3/5/76	1993
75000 <b>25</b>	CHINA ASTER 'Red Mound'	6/27/75	1992

CERTIFICATE NO.	TITLE AND SUBTITLE	ISSUE DATE	EXPIRATION
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7600072	WATERMELON 'Sugarbush'	7/26/77	1994
7800005	ZINNIA 'Rose Starlet'	2/2/78	1995
7800009	LETTUCE 'Royal Oak Leaf'	2/2/78	1995
7900060	MARIGOLD 'Happy Red'	5/1/80	1997
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8400138	PUMPKIN 'Bushkin'	8/30/85	2002
8500128	PEA 'Snappy'	10/31/85	2002
8600040	ZINNIA 'Red Lollipop'	8/31/86	2003

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# Plant Variety Protection Certificates Applications

APPLICATION NO.	TITLE AND SUBTITLE	APPLICATION DATE
8400139	Watermellon 'Sweet Treat'	12/16/86
8600139	Basil 'Purple Ruffles'	7/7/86
8600149	Cucumber 'Picklebush'	7/9/86
8600158	Zinnia 'Pinwheel Rose'	9/8/86